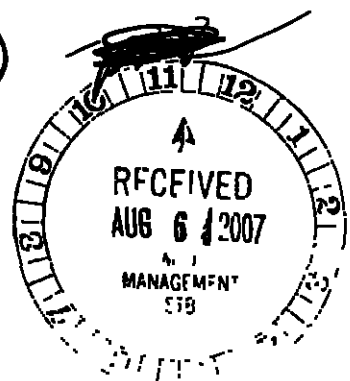


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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO 35067
NORFOLK SOUTHERN RAILWAY COMPANY
- TRACKAGE RIGHTS EXEMPTION -
COMMONWEALTH RAILWAY INCORPORATED

MOTION FOR PROTECTIVE ORDER

ENTERED
Office of Proceedings
1-3-07
Part of
Public Record

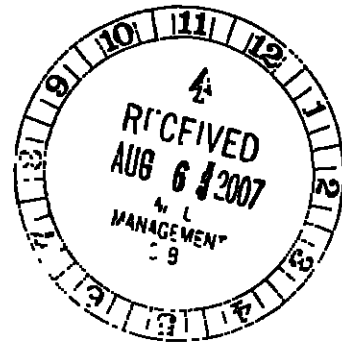
Norfolk Southern Railway Company

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Norfolk Southern Railway Company

Dated August 3, 2007



Before the
Surface Transportation Board

STB Finance Docket No 35067

Norfolk Southern Railway Company
- Trackage Rights Exemption -
Commonwealth Railway Incorporated

Motion for Protective Order

Pursuant to 49 C F R §1104 14(b), Norfolk Southern Railway Company ("NSR") hereby petitions the Surface Transportation Board ("Board") to enter a Protective Order (in the form set forth in Appendix A hereto) in the above-captioned proceeding. The order is required to permit NSR to submit to the Board certain documents that contain highly sensitive commercial terms, and to make such documents available to outside counsel for interested parties, solely for use in this proceeding.

NSR has today sent for simultaneous filing with this Motion a Verified Notice of Exemption pursuant to 49 C F R §§ 1180 2(d)(7) and 1180 4(g), regarding NSR's acquisition of overhead trackage rights over a line of railroad of Commonwealth Railway, Incorporated ("CWRY") between approximately Milepost F-9 90 near Churchland, VA and approximately Milepost F-16 50 near Suffolk, VA, a distance of approximately 6 60 miles, in the Cities of Chesapeake, VA and Suffolk, VA (the "Line"), for the purpose of interchange of railcars between NSR and CWRY. The trackage rights included in this notice (i) are based upon and will be covered by a written

agreement, a redacted draft of which was attached as Exhibit 2 to the Verified Notice of Exemption, and (ii) are not being filed or sought in responsive applications in a rail consolidation proceeding. Accordingly, pursuant to 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), the acquisition of those trackage rights by NSR is exempt from the prior approval requirements of 49 U.S.C. § 11323, et seq.

NSR is submitting (under seal) with this Motion a complete and unredacted copy of the draft Agreement, with a few annotations referencing principal non-final provisions. A public version of the Agreement (from which the confidential material has been redacted) is attached as Exhibit 2 to NSR's Verified Notice of Exemption.

The information redacted from the public version of the Agreement is highly confidential, commercially sensitive information relating to, among other things, the compensation payable by NSR for its exercise of the subject trackage rights. The proposed Protective Order is necessary to protect this highly confidential information from public disclosure. The requested Protective Order will enable NSR to present the Agreement to the Board (and, upon request, to outside counsel for interested parties) while at the same time preserving the confidentiality of that sensitive information and any other sensitive information that might be produced in connection with this proceeding.

The proposed Protective Order is modeled substantially on similar orders that the Board has entered in other recent trackage rights exemption proceedings.¹

¹ See e.g., *South Kansas & Oklahoma Railroad, Inc. - Trackage Rights Exemption - BNSF Railway Company*, STB Finance Docket No. 34873 (STB served May 10, 2006), Motion for Protective Order.

Accordingly, NSR requests that a Protective Order be entered in the form set forth in Appendix A to this Motion, including the form of highly confidential undertaking that accompanies it

NSR further requests that the Protective Order cover the final executed version of the trackage rights agreement as well as the draft trackage rights agreement so that when NSR files that version within 10 days of the date of its execution, pursuant to 49 C.F.R. 1180.6(a)(7)(ii). NSR may file a redacted copy of the final trackage rights agreement in the public docket and the full version of the final trackage rights agreement under seal and subject to the terms of the confidentiality agreement

CWRY has authorized NSR to advise the Board that CWRY joins in this request

Respectfully submitted,



James R. Paschall
Attorney for
Norfolk Southern Railway Company

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Attorney for
Norfolk Southern Railway Company

Dated August 3, 2007

SERVICE DATE – _____, 2007

SEC

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No 35067

NORFOLK SOUTHERN RAILWAY COMPANY - TRACKAGE RIGHTS EXEMPTION -
COMMONWEALTH RAILWAY INCORPORATED

MOTION FOR PROTECTIVE ORDER

Decided _____, 2007

By motion filed August 6, 2007, Norfolk Southern Railway Company (NSR), seeks a protective order under 49 CFR 1104.14(b) to protect the confidential and commercially sensitive terms of both the unredacted draft trackage rights agreement submitted under seal between NSR and Commonwealth Railway Incorporated (CWRY) and the unredacted final executed version of the trackage rights agreement when NSR files that version under seal within 10 days of the date of its execution, pursuant to 49 C F R 1180.6(a)(7)(ii). NSR concurrently filed a notice of exemption under 49 CFR 1180.2(d)(8) for NSR's acquisition from CWRY of the trackage rights described in the agreement and attached to the notice a redacted copy of the draft agreement.

Good cause exists to grant the motion for protective order. Issuance of the protective order ensures that the railroads' highly confidential information will be used solely for this proceeding and not for other purposes.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted, and both the unredacted draft trackage rights agreement and the unredacted executed final version of the trackage rights agreement shall be subject to the Protective Order and Undertakings contained in the Appendix to this decision [1].

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1 NSR's motion for protective order is granted, and the Protective Order and Undertakings in the Appendix to this decision are adopted

2 The unredacted draft trackage rights agreement submitted in STB Finance Docket No 35067 and the unredacted final executed trackage rights agreement to be submitted in STB Finance Docket No 35067 will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the appropriate attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board

3 This decision is effective on its service date

By the Board, Vernon A Williams, Secretary

Vernon A Williams
Secretary

[1] A proposed protective order and undertakings were included with the motion

APPENDIX

PROTECTIVE ORDER

1 For purposes of this Protective Order

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information

(b) "Confidential Information" means the unredacted Trackage Rights Agreement between User, Norfolk Southern Railway Company (NSR) and Owner, Commonwealth Railway, Inc (CWRY), filed in STB Finance Docket No 35067 and enclosed under seal with NSR's Motion herein, traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers or carriers, confidential financial and cost data, divisions of rates, trackage rights compensation levels and other compensation between carriers, and other confidential or proprietary business or personal information

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 2 or 3 of this Protective Order and any Confidential Information contained in such materials

(d) "Proceedings" means those before the Surface Transportation Board (Board) concerning the transaction in STB Finance Docket No 35067, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket No 35067 or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL " Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided hereinafter

3 If any party to these Proceedings determines that any part of a document it submits, discover request it propounds, discovery response it produces, transcript of a

deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains shipper-specific rate or cost data, division of rates, trackage rights compensation levels, other compensation between carriers, or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter

4 Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing the attached Undertaking

5 Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing the attached Undertaking.

6 Any party to these Proceedings who designates information or documents as "HIGHLY CONFIDENTIAL" also must make available a confidential version reviewable by any other party's in-house counsel or a list of all information for a party's outside counsel that must be redacted prior to review by that party's in-house counsel

7 Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges

8 Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Finance Docket No 35067, any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Finance Docket No 35067 and/or any related proceedings.

9 Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these

Proceedings, including any petitions for reconsideration, appeals or remands

10 No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order " See 49 CFR 1104.14 All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board

11 No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party

12 No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order

13 If any party intends to use any Designated Materials in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Materials is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 10 of this

Protective Order

14. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2, or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U S C 11904 or of any other relevant provision of the ICC Termination Act of 1995

15 All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein

16 Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party

17 A party must file simultaneously a public version of any confidential submission it files with the Board

UNDERTAKING

CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2007, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No 35067, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No 35067, any related proceedings before the Surface Transportation Board (Board), and/or any judicial review proceedings in connection with STB Finance Docket No 35067 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed _____

Position: _____

Affiliation _____

Dated: _____

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside [counsel][consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No 35067, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No 35067, any related proceedings before the Surface Transportation Board (Board), or any judicial review proceedings in connection with STB Finance Docket No 35067 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies kept by outside counsel of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL] [CONSULTANT]

Print Name _____

Affiliation _____

Dated _____